

MAY 19 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

JOSEPH TRAHAN,

Petitioner - Appellant,

v.

ARTHUR CALDERON, Warden,

Respondent - Appellee.

No. 06-15788

D.C. No. CV-01-20407-JW

MEMORANDUM *

Appeal from the United States District Court for the
Northern District of California
James Ware, District Judge, Presiding

Argued and Submitted May 12, 2008
San Francisco, California

Before: B. FLETCHER and RYMER, Circuit Judges, and DUFFY **, District
Judge.

Joseph Trahan (“Trahan”), an inmate in the California Department of
Corrections, appeals from the district court’s denial of his 28 U.S.C. § 2254 habeas

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Kevin Thomas Duffy, Senior United States District
Judge for the Southern District of New York, sitting by designation.

petition. In his petition, Trahan claimed that the trial court denied him his Sixth Amendment right to represent himself pursuant to Faretta v. California, 422 U.S. 806 (1975). On appeal, Trahan argues that the California Court of Appeal's decision that his request for self-representation made just before jury selection was untimely was an unreasonable application of Faretta and an unreasonable determination of the facts that would entitle him to relief under § 2254(d)(1) and (2).

The Sixth Amendment right to counsel impliedly includes a right of self-representation, but that right is not absolute. Faretta, 422 U.S. at 832; Stenson v. Lambert, 504 F.3d 873, 884 (9th Cir. 2007). "Because the Supreme Court has not clearly established when a Faretta request is untimely, other courts are free to do so as long as their standards comport with the Supreme Court's holding that a request 'weeks before trial' is timely." Marshall v. Taylor, 395 F.3d 1058, 1061 (9th Cir. 2005). California has stated that a Faretta motion is timely if made "within a reasonable time prior to the commencement of trial." People v. Windham, 560 P.2d 1187, 1191 (Cal. 1977). "Because the timing of [Trahan]'s request fell well inside the 'weeks before trial' standard for timeliness established by Faretta, the court of appeal's finding of untimeliness clearly comports with Supreme Court precedent," and thus was not contrary to, or an unreasonable application of, clearly

established federal law as determined by the Supreme Court. Marshall, 395 F.3d at 1061; Stenson, 504 F.3d at 884 (holding that state court determination that request to proceed pro se was untimely was not objectively unreasonable under AEDPA as the Supreme Court has never held that Faretta's "weeks before trial" standard requires courts to grant requests coming on the eve of trial).

There is no merit to Trahan's other argument that the state court made an unreasonable determination of the facts in finding his request untimely. Trahan's argument is, in fact, a disguised legal challenge to the state court's application of California's own timeliness standard for Faretta requests, which is not an issue that we address on federal habeas review. See Estelle v. McGuire, 502 U.S. 62, 67-68 (1991).

The foregoing renders Trahan's remaining arguments inapposite. Appellee Calderon's motion to submit the case on the briefs is denied, as moot.

AFFIRMED.